

AUG 6 1966

Technicality Upholds Raid on Der Spiegel

From News Dispatches

KARLSRUHE, West Germany, Aug. 5—A legal technicality today forced the West German Constitutional Court to give its backing to the biggest police action against newsmen in West German history.

Reuters reported that the eight judges were split 4-4 on a petition by the news magazine Der Spiegel, which asserted that a 1962 police raid on its offices after it published alleged defense secrets was illegal and unconstitutional.

Half the judges accepted the magazine's claim that the dawn raid and the ensuing search and confiscation of editorial material violated basic rights of press freedom.

But under West German legal procedure, a court would have to have a majority to rule the actions unconstitutional and illegal.

The police action against Der Spiegel came three weeks after the magazine published details of a NATO exercise which, it was claimed, betrayed top defense secrets showing serious shortcomings in West German military preparedness.

Publisher Rudolf Augstein and 10 other persons—mainly Spiegel writers—were held under investigatory arrest for varying periods as the prosecutor probed alleged treason, treasonable falsification and legal acquisition of information.

The affair quickly blew up into a government crisis and led to the resignation of Defense Minister Franz-Josef Strauss, who was alleged to have played a decisive role in organizing the police action. Legal proceedings against him were stopped last year.

The courts have been mopping up the legal aftermath of the affairs step by step. Charges were dropped one by one, and preliminary investigations are going on of only two suspects: a defense ministry colonel who is alleged to have given information to the magazine, and one Spiegel writer.

The crucial article has been shown to be a cleverly constructed collection of facts which had already been published, the Manchester Guardian reported, which is why the treason charges were dropped.

Augstein meanwhile took the case to the Constitutional Court, claiming that the federal prosecutor overstepped his authority and violated the German basic law in ordering the police swoop.

In its 96-page judgment, the Court decided that the raid was constitutionally and legally justified, but stated that a free press was an essential element of a free state and in particular that a politically oriented press was indispensable to a modern democracy.